

them at least two years ahead of the competition.”⁶⁶ On this basis, the 186 MHz of BRS/EBS spectrum and its licensees must be considered competitors in the relevant product market.

Second, the Applicants believe the FCC’s prior decision not to include Advanced Wireless Services (“AWS”) spectrum has been overtaken by events. In the *AT&T-Dobson Order*, the Commission declined to consider AWS licensees to be participants in the mobile telephony market, concluding that “[t]he AWS-1 spectrum is not generally available for mobile use as yet due to the ongoing clearance of governmental and non-governmental incumbent users . . . [and] the clearance process has no single timetable.”⁶⁷ Recently, however, a number of licensees have, in fact, initiated service using the AWS band frequencies. For example, T-Mobile USA has “recently launched broadband AWS-1 operations in the New York market and plans to roll out service in 25 markets by the end of 2008.”⁶⁸ MetroPCS has launched AWS in

⁶⁶ Sprint CEO Dan Hesse, quoted in Tricia Duryee, “Sprint-Clearwire: Hesse: Spectrum Combo Puts New WiMax JV Two Years Ahead of Competition,” *Washingtonpost.com* (May 7, 2008), available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/07/AR2008050701164.html> (last visited June 10, 2008). See also Press Release, Sprint and Clearwire to Combine WiMAX Businesses, Creating a New Mobile Broadband Company (May 7, 2008), at <http://www.clearwireconnections.com/pr/pressreleases/050708.pdf> (last visited June 4, 2008) (“the new Clearwire will have a time-to-market advantage over competitors in fourth-generation services, supported by strong spectrum holdings and a national footprint.”).

⁶⁷ *AT&T-Dobson Order*, 22 FCC Rcd at 20,314 (¶ 33); see also *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,543 (¶ 31 & n.129) (stating “it is still premature to classify the AWS spectrum as suitable for the provision of mobile telephony for purposes of our analysis here”).

⁶⁸ Letter from Kathleen O’Brien Ham, Vice President, Federal Regulatory Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 07-195 (June 4, 2008) (regarding meeting with FCC’s Office of Engineering and Technology). See also Press Release, T-Mobile USA, Inc., T-Mobile USA Begins Commercial 3G Network Rollout (May 5, 2008), at http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20080505&title=T-Mobile%20USA%20Begins%20Commercial%203G%20Network%20Rollout (last visited June 4, 2008) (announcing that the company has “launch[ed] its UMTS/HSDPA network in New York City,” and that it “plans to continue the rollout of its 3G network across major metropolitan markets through the year [and,] [b]y year’s end, . . . expects its high-speed data network will be available in those cities where a majority of its subscribers currently use data services”).

Las Vegas, Nevada, and recent press reports indicate that numerous other areas are to follow, with “[t]he crown jewel of its footprint, New York, . . . go[ing] live before the end of the 2nd quarter.”⁶⁹ Notably, at the time that service area is launched, “almost half of Metro’s covered pops will be in AWS networks.”⁷⁰ Other carriers, such as LEAP Wireless and Stelera, have also been reported to have launched commercial services in the AWS bands.⁷¹ Given the substantial roll-out of wireless broadband services in this band, there is no basis to continue to exclude the 90 MHz of AWS spectrum from the input-product market. This is particularly the case since the Commission determined to include 700 MHz spectrum as input spectrum before the vast majority of it was licensed and more than a year before the spectrum was cleared for deployment of wireless services.⁷²

The Applicants also believe that the Commission should revisit its previous conclusion to “exclude satellite carriers, wireless VoIP providers, MVNOs [Mobile Virtual Network Operators], and resellers from consideration when computing initial measures of market

⁶⁹ Kevin Fitchard, MetroPCS to Complete AWS Shift in One Year, TelephonyOnline, May 9, 2008, at <http://telephonyonline.com/wireless/news/metropcs-leap-aws-0509/> (last visited June 4, 2008).

⁷⁰ *Id.*

⁷¹ Press Release, Leap Wireless International, Inc., Leap Launches First Advanced Wireless Services (AWS) Market with Full Capacity Retail and Network Introduction of Cricket Unlimited Wireless Service to Oklahoma City (Mar. 31, 2008), at <http://phx.corporate-ir.net/phoenix.zhtml?c=191722&p=irol-newsArticle&ID=1123363&highlight=> (last visited June 4, 2008); Press Release, Stelera Wireless, Stelera Wireless Launches Inaugural Wireless Network Providing High Speed Internet in Rural America (Feb. 8, 2008), at <http://www.stelerawireless.com/Portals/0/docs/2.08.08%20Stelera%20Wireless%20Launches%20Inaugural%20Wireless%20Network,%20Providing%20High%20Speed%20Internet%20in%20Rural%20America.pdf> (last visited June 4, 2008).

⁷² Additionally, the Commission determined to include PCS spectrum in the CMRS spectrum cap (the screen’s predecessor) well before that spectrum was cleared and available for deployment of competitive CMRS services.

concentration.”⁷³ The inclusion of satellite providers with Ancillary Terrestrial Component (“ATC”) authority is especially appropriate. Mobile Satellite Ventures (“MSV”) has already received ATC authority, and MSV “is currently authorized to use approximately 30 MHz of coordinated North American spectrum in a terrestrial wireless network with an integrated satellite overlay to provide ubiquitous and enhanced services.”⁷⁴ Globalstar, Inc. (“Globalstar”), a 1.6/2.4 GHz MSS provider, also recently announced that the FCC had expanded its ATC authority to include almost 20 MHz of spectrum, and noted that the company had “an agreement with Open Range Communications Inc. (“Open Range”) permitting Open Range to deploy wireless broadband service in rural America using Globalstar’s ATC authority.”⁷⁵ The press release further notes that Open Range had secured “a \$267 million broadband service loan from the Department of Agriculture’s Rural Utilities program,” and proposes “to use the Globalstar spectrum to deploy wireless WiMAX services to over 500 rural American communities.”⁷⁶ Additionally, “[t]he FCC has assigned 20 MHz of 2 GHz MSS spectrum to ICO [Global Communications (“ICO”), a 2 GHz mobile satellite service (“MSS”) provider,] with geographic coverage of all 50 states in the United States, as well as Puerto Rico and the U.S. Virgin

⁷³ See, e.g., *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,544 (¶ 33); *Sprint-Nextel Order*, 20 FCC Rcd at 13,991 (¶ 58); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,070-71 (¶¶ 38-39); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,564 (¶ 92).

⁷⁴ Mobile Satellite Ventures Website, Investor/Financial Company Fact Sheet, <http://www.msvlp.com/investor/fact-sheet.cfm> (last visited June 4, 2008).

⁷⁵ Press Release, Globalstar, Inc., FCC Expands Globalstar’s Ancillary Terrestrial Component Authority (Apr. 10, 2008), at http://www.globalstar.com/en/news/pressreleases/press_display.php?pressId=481 (last visited June 4, 2008).

⁷⁶ *Id.*

Islands.”⁷⁷ ICO recently filed for blanket authority to operate ATC base stations in that 20 MHz of spectrum.⁷⁸ TerreStar also has pending a request for ATC authority.⁷⁹ These ATC services clearly have the capability to compete with services provided over spectrum already included in the relevant product market and are receiving serious financial backing.⁸⁰ Given these developments, any spectrum input analysis should, at a minimum, consider the nearly 90 MHz of ATC spectrum as input spectrum for the analysis.

The Commission is also poised to license a new nationwide wireless broadband competitor in the 2155-2175 MHz band.⁸¹ Based upon press reports, the Commission is readying an order to license this spectrum to a single entity on a nationwide basis. The entity will be required to provide a minimum level of wireless broadband services (at 768 kbps) for free to the public.⁸² It will also be permitted to charge a fee for higher speed broadband services.⁸³ It

⁷⁷ ICO Website, MSS/ATC System, http://www.ico.com/_about/tech/na_mss_atc.php (last visited June 4, 2008).

⁷⁸ See Report No. SES-01012, *FCC Public Notice* (rel. Mar. 5, 2008). Craig McCaw has attributable interests in both the Clearwire venture and ICO.

⁷⁹ See Report No. 01018, *FCC Public Notice* (rel. Mar. 26, 2008).

⁸⁰ See “TerreStar Announces Strategic Investment by EchoStar, Harbinger & Other Investors—Transaction Facilitates Funding through Satellite Launch and will Enhance TerreStar’s Nationwide Spectrum Footprint,” News Release (Feb. 7, 2008), *available at* <http://www.terrestarnetworks.com/news/press/index.html> (noting commitment of \$300 million in investments in TerreStar, which is building the nation’s first integrated mobile satellite-terrestrial (MSS/ATC) communications network); “Mobile Satellite Ventures and SkyTerra Communications Enter Into an Agreement for a \$150 Million Financing,” News Release (Dec. 17, 2007), *available at* <http://www.msvlp.com/media/press-releases-view.cfm?id=157&yr=2007> (noting that MSV is “developing a hybrid satellite-terrestrial communications network, which . . . will provide seamless, transparent and ubiquitous wireless coverage of the United States and Canada to conventional handsets”).

⁸¹ See *Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band*, Notice of Proposed Rulemaking WT Docket No. 07-195 (rel. Sept. 19, 2007).

⁸² See “Martin’s Free Broadband Plan May Face Commission Opposition,” *Communications Daily*, June 2, 2008.

is reported that the Commission will adopt service rules for this spectrum in July and proceed to auction it by year end.⁸⁴ This new licensee will be an additional competitor in the segment.

Finally, the Applicants also believe that the national resellers/MVNOs that compete successfully on the strength of uniquely packaged voice and data services using their own proprietary brand names should also be considered as legitimate market participants. The Commission itself has found in other contexts that wireless resellers provide additional competition.⁸⁵ Some MVNOs are formidable competitors—TRACFONE, for example, serves over 6.5 million customers nationally through resale, while Virgin Mobile serves over 4.8 million customers and, as of March 31, 2007, Boost Mobile served nearly 4.3 million customers nationally, including customers in virtually all of the subject areas. Qwest Wireless resells wireless plans in 14 states, all but two of which (Oregon and Washington) are included in the overlap geographic license areas. Cable operators are also expected to bundle wireless together with their video and VoIP offerings. The Commission should consider these providers to be participants in the relevant product market as well.

⁸³ See *id.*

⁸⁴ See “Martin Pulls AWS-3 Order from June Agenda, Wants July Vote,” *Communications Daily*, June 9, 2008.

⁸⁵ See, e.g., 2000 Biennial Regulatory Review, *Spectrum Aggregation Limits for Commercial Mobile Radio Servs.*, Report and Order, 16 FCC Rcd 22,668, 22,690 (¶ 42) (2001) (“[C]arriers can compete in the provision of CMRS without direct access to spectrum through resale, or a mobile virtual network operator (‘MVNO’) arrangement.”); *id.* at 22,690 n.45 (The MVNO arrangement “is one in which ‘a network operator acts as a wholesaler of airtime to another firm, which then markets itself to users just like an independent operator with its own network infrastructure.’”); see also J. Moynihan, *et al.*, Merrill Lynch, *US Wireline 1Q04 Roundup* at 3 (May 7, 2004) (“[T]here may be five or more large scale companies reselling wireless service by 2005, along with the five facilities-based wireless providers (post the Cingular/AT&T Wireless transaction).”).

c. Initial Screen

In prior mobile transactions, the Commission has used an initial “screen” to focus its competitive inquiry. Specifically, the Commission looks at markets where:

- the post-transaction Herfindahl-Herschman Index (“HHI”) would be greater than 2800 and the change in HHI would be 100 or greater;
- the change in HHI would be 250 or greater regardless of the level of the HHI; or
- post-transaction, the Applicants would hold 95 megahertz or more of spectrum.⁸⁶

As discussed above, there are compelling reasons for increasing the spectrum-related part of the initial screen given the other spectrum bands currently, or soon to be, used for competitive CMRS services. At a minimum, the screen must be increased to reflect the inclusion of BRS/EBS, MSS ATC and AWS spectrum in the spectrum screen analysis. Recent developments with respect to the BRS/EBS band—particularly Clearwire’s announced plans for rapid deployment of an extensive mobile broadband network that Clearwire has stated will surpass what is available today—make clear that this spectrum and its licensees must be considered in the competition analysis for the relevant product market. There is also plainly no valid reason to continue to exclude the AWS or MSS ATC spectrum from the analysis.

In view of the new spectrum realities, the Commission should modify the spectrum screen. Given the vibrantly competitive CMRS market, all of the new spectrum recently made available for such services, and the continual launch of innovative mobile broadband services

⁸⁶ See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20,318 (¶ 40); see also *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,546 (¶ 36); *Sprint-Nextel Order*, 20 FCC Rcd at 13,993 (¶ 63); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,073 (¶ 46); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,568 (¶ 106). Consistent with the discussion in the preceding section, the amount of spectrum now available for commercial wireless spectrum dictates a revision of the 95 MHz trigger. The Commission set 95 MHz as the threshold amount for review when there was only 280 MHz of commercial spectrum available for similar services. Today, however, the availability of BRS/EBS, MSS ATC and AWS spectrum raises that amount to over 600 MHz. Accordingly, the Commission should raise the initial trigger substantially.

within existing allocations, there is no continued basis for the current method of analysis. Indeed, counting 50 MHz of cellular, 120 MHz of 1.9 GHz PCS, Sprint's 10 MHz "G" Block, 20 MHz of enhanced SMR, 80 MHz of 700 MHz, 186 MHz of BRS/EBS, 90 MHz of AWS-1,⁸⁷ and 90 MHz of MSS ATC, there is a tremendous amount of spectrum—more than 600 MHz—available for competitive CMRS services. Considering the deployment of facilities-based services on this array of spectrum, there are a huge number of existing and potential competitors, augmented by wireless VoIP providers, MVNOs, and resellers. Against that background, there is no basis for establishing a screen at 95 MHz. Further, there is no basis for any competitive concern regarding the instant transaction.

Even assuming *arguendo* that additional competitive CMRS spectrum should not be considered, the transaction does not harm competition under the current initial screen standard. In Exhibit 4, the Applicants have provided a chart detailing the amount of spectrum attributable to the post-transaction Verizon Wireless in the ALLTEL CMAs. Exhibit 5 provides a list of competitors operating in the overlap markets utilizing cellular, PCS, 700 MHz and AWS spectrum.

2. The Proposed Merger Will Not Result in Competitive Harms

a. As the Commission Has Found, Competition for Mobile Subscribers Is Extremely Robust

The Commission's most recent report on CMRS competition found that "there is effective competition in the CMRS marketplace,"⁸⁸ observing that:

[a]s of July 2007, 280 million people, or 98 percent of the total U.S. population, have three or more different operators (cellular, PCS, and/or digital SMR)

⁸⁷ There are at least another 20, if not 40, MHz of spectrum being considered for the provision of AWS.

⁸⁸ 12th Annual Competition Report, 23 FCC Rcd at 2245 (¶ 1).

offering mobile telephone service in the counties in which they live. Roughly 267 million, or 94 percent of the U.S. population, live in counties with four or more mobile telephone operators competing to offer service. . . . [T]he percent of the U.S. population living in counties with five or more mobile telephone operators . . . grew by 16 percent in the past year.⁸⁹

In the FCC's data gathering process, more than 150 companies identified themselves as terrestrial mobile wireless carriers.⁹⁰ The Commission noted that, in addition to these operators, "the CMRS industry also includes mobile telephone resellers and [MVNOs], mobile satellite service providers, and various broadband and narrowband data service providers."⁹¹ The report explained that this determination that effective competition exists, as well as the consumer benefits achieved through effective competition, also extends to rural areas.⁹²

The report additionally documented the beneficial impact of robust competition for U.S. subscribers, noting that "U.S. consumers continue to reap significant benefits—including low prices, new technologies, improved service quality and choice among providers—from competition in the [CMRS] marketplace, both terrestrial and satellite CMRS."⁹³ The report declared that,

"[t]he continued rollout of differentiated pricing plans also indicates a competitive marketplace. In the mobile telephone sector, we observe independent pricing behavior, in the form of continued experimentation with varying price levels and structures, for varying service packages, with various handsets, and policies on handset pricing."⁹⁴

⁸⁹ *Id.*, 23 FCC Rcd at 2265 (¶¶ 44-45).

⁹⁰ *Id.*, 23 FCC Rcd at 2245 (¶ 2).

⁹¹ *Id.*, 23 FCC Rcd at 2246 (¶ 2).

⁹² *Id.*, 23 FCC Rcd at 2291 (¶ 110). The report states that the average number of competitors in rural areas has remained generally unchanged in the last 4 years. *Id.*, 23 FCC Rcd at 2289 (¶ 105).

⁹³ *Id.*, 23 FCC Rcd at 2245 (¶ 1).

⁹⁴ *Id.*, 23 FCC Rcd at 2292 (¶ 112).

The report went on to note one analyst's observation that the "price per-minute is off 10% the past year, 20% over the past two years and 40% over the past three years."⁹⁵ The report further noted that "[s]ervice providers in the mobile telecommunications market also compete on many more dimensions other than price, including non-price characteristics such as coverage, call quality, data speeds, and mobile data content."⁹⁶ Moreover, the constant prospect of dissatisfied customers switching providers, the ease of which has grown significantly since the Commission's adoption of local number portability rules for wireless service, ensures the existence of a competitive wireless marketplace focused on meeting the pricing and service needs of consumers.⁹⁷

If anything, competition has become even more robust since the *12th Annual Competition Report*. First, in the intervening time, the "new" Clearwire venture was formed, as previously discussed. According to the company, the new Clearwire has "the largest spectrum position owned by one company," as well as the backing of Sprint Nextel, the country's third largest mobile carrier; Google, the world's dominant internet search engine and diversified information technology company; Intel, the world's largest supplier of semiconductor chips⁹⁸; as well as Comcast, Time-Warner, and Brighthouse, respectively the country's largest, second largest, and sixth largest cable television companies. The Clearwire venture plans to serve a substantial portion of the U.S. population by the end of 2009, and must be considered a strong entrant in the mobile marketplace.

⁹⁵ *Id.*, 23 FCC Rcd at 2321-22 (¶ 195).

⁹⁶ *Id.*, 23 FCC Rcd at 2297 (¶ 124).

⁹⁷ *Id.*, 23 FCC Rcd at 2317-18 (¶ 183).

⁹⁸ iSuppli.com, Competitiveness Separates Winners from Losers in 2007 Semiconductor Market (Nov. 27, 2007), <http://www.isuppli.com/news/default.asp?id=8675> (last visited June 9, 2008).

In addition, as noted by Chairman Martin, the recent 700 MHz auction provided “significant opportunities for new entrants, rural providers and non-nationwide incumbents,” drawing “wide-ranging interest from a number of new players.”⁹⁹ The Chairman noted that “[a] bidder other than a nationwide incumbent won a license in every market” and that “[a] total of 99 bidders other than the nationwide wireless incumbents won 754 licenses—representing approximately 69 percent of the 1,090 licenses sold in the 700 MHz auction.”¹⁰⁰ Notably, “[i]n the unpaired E-block, new entrant Frontier Wireless LLC (Dish Network) won 168 licenses to establish a near nationwide footprint.”¹⁰¹ Indeed, following the auction, and based upon the FCC’s research, Chairman Martin indicated that carriers other than Verizon Wireless, AT&T Mobility, Sprint Nextel and T-Mobile, “including rural carriers, new entrants, and small businesses, hold significantly more spectrum in the top 100 markets than any one of the nationwide incumbents alone and hold even more spectrum on average in rural areas.”¹⁰²

As a final matter, the parties note the advances in MSS/ATC services. Both Globalstar and MSV have already received ATC authority, which permits those companies to deploy terrestrial mobile networks on almost 50 MHz of spectrum, and ICO’s request for ATC authority is currently pending. That increases the amount of spectrum available for mobile services by nearly 70 MHz, and creates three new competitors in the mobile marketplace.

⁹⁹ Written Statement of the Honorable Kevin J. Martin, Chairman, Federal Communications Commission, Before the Committee on Energy and Commerce, U.S. House of Representatives (Apr. 15, 2008) at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-281550A1.pdf (last visited June 4, 2008).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

**b. The Proposed Merger Does Not Diminish Significantly
Competition in Any Local Market**

The proposed transaction will not harm mobile competition in any local markets. As discussed below, the types of harms that the Commission has considered on a local basis are not present in the CMAs involved in this transaction. As the Applicants have previously noted, in fact, the robust competitive forces at the national level operate to discipline the behavior of participants even at the local level. While the Applicants have provided, in Exhibits 4 and 5, details of the competitors present in the overlap counties and overall spectrum aggregation by the combined entity, the harmful behaviors that are analyzed at the local level are infeasible given the existing competitive forces at play in today's mobile marketplace.

(1) Unilateral Effects

In the Commission's prior competitive analyses, it has undertaken to determine whether a post-merger firm is capable of unilateral effects. "Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by 'elevating price and suppressing output.' . . . [i]n the case of mobile telephony, this might take the form of delaying improvements in service quality or adversely adjusting plan features without changing the plan price."¹⁰³ As discussed below, unilateral effects are typically constrained by competitive responses by rival firms (*i.e.*, other competitors adjusting their behavior to undercut the merged firm's ability to extract supra-competitive profits); the potential for new entry (*i.e.*, the ability of new firms to enter the market); the market share of the post-transaction entity; and the penetration rate in the

¹⁰³ See *ALLTEL-Midwest Order*, 21 FCC Rcd at 11,550 (¶ 47 & n.175) (citing *Sprint-Nextel Order*, 20 FCC Rcd at 14,001 (¶ 91); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,075 (¶ 54); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,570 (¶ 115); *DOJ/FTC Merger Guidelines* § 2.2).

local market (*i.e.*, the ability of firms to acquire new customers as opposed to churning customers from other carriers). Each of these factors is discussed below.

(a) Competitive Responses by Rivals

In assessing whether a merged firm has market power, the FCC has stated that “[w]e examine whether competitive responses by rivals to the merged entity—such as through repositioning by existing licensees or entry by a new licensee—would sufficiently counter the merged entity’s exercise of market power.”¹⁰⁴ Specifically, the FCC has noted that “where a firm is already present in a market, has comparable service coverage, and has excess capacity relative to its current subscriber base, it should be able to relatively quickly adjust such factors as rates, plan features, handsets, and advertising.”¹⁰⁵

The charts attached at Exhibits 4 and 5 make clear that there are multiple carriers licensed to provide CMRS service in the markets where Verizon Wireless’ and ALLTEL’s spectrum holdings overlap. As discussed above, the Commission has consistently found the CMRS market to be highly competitive and that carriers compete vigorously based upon price, quality, coverage and service packages.¹⁰⁶ In fact, in the *12th Annual Competition Report*, the FCC found that—based upon an analysis starting with Census Blocks—four or more competitors existed in counties comprising 93.6% of the US population.¹⁰⁷ When it is considered that—even if competition is assessed on a rather small CMA basis—the counties with fewer providers are, in

¹⁰⁴ ALLTEL-Midwest Order, 21 FCC Rcd at 11,551 (¶ 50 & n.175) (citing *Sprint-Nextel Order*, 20 FCC Rcd at 14,007-009 (¶¶ 108-114); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,079-081 (¶¶ 65-72); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,575-576 (¶¶ 134-137)).

¹⁰⁵ ALLTEL-Midwest Order, 21 FCC Rcd at 11,551 (¶ 50).

¹⁰⁶ See pp. 42-45, *supra*.

¹⁰⁷ *12th Annual Competition Report*, 23 FCC Rcd at 2265 (¶ 43, tbl. 3).

all likelihood, adjacent to and competitively constrained by by counties where four or more competitors exist, it is clearly the case that an existing firm in any market could respond rapidly to a purported exercise of unilateral market power by a combined company. Moreover, the intense competition among the four national carriers will continue unaffected after the transaction.

(b) Spectrum and Barriers to Entry

~~As the FCC has explained in the context of the ALLTEL/Midwest Order,~~ “[a]lthough we no longer have a *per se* limit on the amount of spectrum suitable for mobile telephony that an entity may hold in any one market, we are mindful of the unique role of spectrum as a critical input in the market for wireless services and have carefully analyzed the potential impact of [the ALLTEL/Midwest] merger on that input.”¹⁰⁸ The amount of suitable substitute spectrum provides a metric for determining both the ability of competitors to expand capacity, but also—because spectrum is essential to competitors—a measure of whether other firms could enter or expand in response to any effort by the merged firm to exercise market power. Notably, the FCC has recognized that the relevant question is whether the combined company’s competitors would have the capacity to absorb sufficient current subscribers of the merging companies to thwart any prospective exercise of market power (*i.e.*, price increases).

The Commission has recognized that, “if entry into a market is easy, then entry or the threat of entry may prevent incumbent operators from exercising market power, either collectively or unilaterally, even in highly concentrated markets.”¹⁰⁹ As discussed previously,

¹⁰⁸ ALLTEL-Midwest Order, 21 FCC Rcd at 11,552 (¶ 53).

¹⁰⁹ 12th Annual Competition Report, 23 FCC Rcd at 2272-73 (¶ 70).

there is conservatively over 600 MHz available for competing CMRS services.¹¹⁰ The availability of AWS, BRS/EBS, and MSS/ATC spectrum greatly reduces the capacity constraints faced by the merging companies' competitors.¹¹¹ Further, the Commission is currently considering making available additional spectrum for mobile telephony and broadband services.¹¹²

In addition, many of the competitors with substantial spectrum are positioned to rapidly enter any local market. Clearwire, for example, is allied with existing mobile operator Sprint, and could leverage Sprint's existing backhaul and tower infrastructure to rapidly introduce service in any local area it chooses.¹¹³ This is evidenced by the statement by Sprint's CEO, Dan Hesse, that the Clearwire company will roll-out service to 60 to 80 million POPs in 18 months—a rate of about a million POPs a week. Similarly, many of the firms holding AWS spectrum also have existing mobile networks (*e.g.*, T-Mobile, MetroPCS, and LEAP) or other network resources (*e.g.*, the CATV distribution infrastructure of SpectrumCo's parents). Where companies have discussed deployment schedules, those deployment schedules have been exceptionally rapid. Thus, it is quite clear that the large amount of mobile spectrum currently licensed—even if not currently available to the public in a specific local market—is a highly credible entry threat because of the rapidity of the time to market for many spectrum holders.

¹¹⁰ See p. 42, *supra*.

¹¹¹ *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,576 (¶ 136 & n.379); *Sprint-Nextel Order*, 20 FCC Rcd at 13,985 (¶ 158), and Appendix C, n.2.

¹¹² See *Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band*, Notice of Proposed Rulemaking, 22 FCC Rcd 17,035 (2007) ("*Advanced Wireless Services 2007 NPRM*").

¹¹³ See *Clearwire Application* at 19 (stating that Clearwire "expects to achieve its accelerated schedule of reaching up to 140 million consumers by the end of 2010 by building on the Applicant's collective deployment experience and leveraging Sprint's existing network infrastructure through a series of separately negotiated commercial agreements").

(c) Subscriber Share and Penetration

The FCC has traditionally recognized that “the presence of few competitors or potential entrants that consumers consider to be good substitutes for the merged firm, combined with a large market share by the merged entity, may increase the likelihood of unilateral effects.”¹¹⁴ Also relevant to this analysis is the potential for the number of potential subscribers to increase—“another factor [the FCC] consider[s] in determining the consequences of a unilateral attempt to exercise market power is penetration rate, both the current rate in a local market as well as the potential for growth in market penetration.”¹¹⁵

As documented in the attached Declaration of Carlton *et al.*, over the past twenty years, there has been enormous and continuous growth in the number of subscribers to wireless voice services. With the transition from analog to digital technology, wireless data has begun to attract a significant number of subscribers. “These trends are expected to continue. For example, Jefferies & Company forecasts that ‘mobile data growth will rapidly outpace voice in [the] next few years.’ Moreover, [t]he dramatic increases in output and reductions in price of the wireless telecommunications industry observed in recent years have been achieved as carriers merged and expanded to develop nationwide networks from their original regional service providers.”¹¹⁶ Based on this data, the transaction is unlikely to give rise to competitive harms.

¹¹⁴ ALLTEL-Midwest Order, 21 FCC Rcd at 11,552 (¶ 55 & n.194) (citing *Sprint-Nextel Order*, 20 FCC Rcd at 14,001 (¶ 92); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,076-077 (¶ 58); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,570-571 (¶¶ 117-118); *DOJ/FTC Merger Guidelines* § 2.211).

¹¹⁵ ALLTEL-Midwest Order, 21 FCC Rcd at 11,553 (¶ 58) (citing *ALLTEL-WWC Order*, 20 FCC Rcd at 13,083-085 (¶¶ 78-83); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,578-580 (¶¶ 146-149)).

¹¹⁶ Exhibit 3 at 17 (¶ 33) (citing CTIA’s Wireless Industry Indices, Year-End 2007 Results, May 2008, Chart 25; Romeo A. Reyes, et al., “Special Situations: 700 MHz Auctions – A Prime Area of Wireless Spectrum” Jefferies & Company, Inc., January 22, 2008, p. 7).

(2) Coordinated Interaction

Beside unilateral effects, the FCC also analyzes the potential for coordinated action. In other words, "in markets where only a few firms account for most of the sales of a product, those firms may be able to exercise market power by either explicitly or tacitly coordinating their actions."¹¹⁷ The FCC recognizes that "[s]uccessful coordination depends on ... the ability to reach terms that are profitable for each of the firms involved, and ... the ability to detect and punish deviations that would undermine the coordinated interaction."¹¹⁸ The overlap CMAs do not pose any risk of coordinated interaction because the overall market for mobile services is highly competitive, and each CMA will continue to have a substantial number of competitors post-merger.

Indeed, there is clear evidence to suggest that carriers go to great lengths to compete by attempting to differentiate their products from their competitors. The industry would not have experienced the upheavals that occurred with rate plans offering large buckets of minutes, single rate calling plans, in-network free calling plans, product test drives, network openness and other pricing and service innovations if the market were not competitive. The *12th Annual Competition Report* notes, in fact, that "[i]n addition to investing in network infrastructure and acquiring spectrum, providers continue to pursue marketing strategies designed to differentiate their brand from rival offerings based on dimensions of service quality such as superior network coverage,

¹¹⁷ ALLTEL-Midwest Order, 21 FCC Rcd at 11,554 (¶ 60) (citing *Sprint-Nextel Order*, 20 FCC Rcd at 13,995 (¶ 69); *ALLTEL-WWC Order*, 20 FCC Rcd at 13,085 (¶ 85); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,580 (¶¶ 150); *DOJ/FTC Merger Guidelines* § 0.1).

¹¹⁸ ALLTEL-Midwest Order, 21 FCC Rcd at 11,554 (¶ 60).

reliability, and voice quality”¹¹⁹—a result that would be unexpected if tacit collaboration were, in fact, occurring.

III. PROCEDURAL CONSIDERATIONS

A. Request for Declaratory Ruling on Foreign Ownership

Verizon Wireless requests that the Commission extend Verizon Wireless’ current Section 310(b)(4) authority to hold interests in common carrier licenses and authorizations to encompass the ALLTEL Subsidiaries and Partnerships and the FCC licenses they will hold following transfer to Verizon Wireless as a result of this transaction. The Commission has previously approved Vodafone’s minority interest in Verizon Wireless, as well as Vodafone’s qualifications (as a foreign corporation) to hold indirect interests in common carrier licensees, pursuant to Section 310(b)(4) of the Communications Act.¹²⁰ No material changes have occurred in Verizon Wireless’ foreign ownership since that authorization was granted. Thus, the proposed transaction raises no new foreign ownership issues, and the Commission can and should extend the previous Section 310(b)(4) authorization to the ALLTEL Subsidiaries and Partnerships and the FCC licenses they will hold following transfer to Verizon Wireless.¹²¹

Here, Verizon Wireless proposes to acquire Atlantis Holding’s interests in the ALLTEL Subsidiaries and Partnerships. As a result of the transaction, these entities will be indirectly

¹¹⁹ *12th Annual Competition Report*, 23 FCC Rcd at 2310 (¶166).

¹²⁰ 47 U.S.C. §310(b)(4).

¹²¹ Verizon Wireless submits that the Commission need not issue a declaratory ruling, given the agency’s prior Section 310(b)(4) rulings approving Verizon Wireless’ current foreign ownership. Nonetheless, should the Commission determine that a new declaratory ruling is necessary, Verizon Wireless hereby requests such a ruling extending its current Section 310(b)(4) authority to hold interests in common carrier licenses and authorizations to encompass the FCC licensees and licenses in which it will hold an interest as a result of the proposed transaction.

owned by Verizon Wireless. Verizon Wireless is a Delaware general partnership owned indirectly by Verizon Communications and Vodafone. Verizon Communications, a Delaware corporation, owns 55 percent of Verizon Wireless; Vodafone, a public limited company organized under the laws of the United Kingdom, owns 45 percent.

As noted above, Vodafone has previously received authorization from the Commission to hold its indirect interests in Verizon Wireless' common carrier licenses and authorizations. In conjunction with the creation of the partnership, Verizon Communications and Vodafone sought Commission approval, pursuant to Section 310(b)(4), for Vodafone to indirectly hold up to 65.1 percent of Verizon Wireless. The Commission granted the parties' request, determining that "the public interest would be served by allowing the proposed indirect foreign ownership," consistent with the Commission's *Foreign Participation Order*.¹²² No material changes have occurred in Verizon Wireless' foreign ownership since that authorization was granted.¹²³ Further, the

¹²² *In re Applications of Vodafone AirTouch, Plc, and Bell Atlantic Corp., for Consent to Transfer Control or Assignment of Licenses and Authorizations*, Memorandum Opinion and Order, 15 FCC Rcd 16,507, 16,514 (¶ 19) (WTB & IB 2000) ("Vodafone/Bell Atlantic Order"). The Commission previously determined that, "[b]ecause the United Kingdom is a Member of the World Trade Organization (WTO), under the Commission's *Foreign Participation Order*, we presume that the public interest would be served by authorizing, under Section 310(b)(4), common carrier radio licenses held by entities indirectly owned by Vodafone and citizens of the United Kingdom." *In re Applications of AirTouch Commc'ns, Inc. and Vodafone Group, Plc, for Consent to Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order, 14 FCC Rcd. 9430, 9434 (¶ 9) (WTB 1999). The Commission authorized Vodafone to hold up to a 100 percent indirect foreign ownership interest in U.S. common carrier radio licensees. *See id.*; *Int'l Authorizations Granted*, Public Notice, 15 FCC Rcd 116 (IB 1999). Subsequently, the Commission granted the request to allow Verizon Wireless to "be indirectly owned by Vodafone in an amount up to 65.1 percent" and authorized the transfer and assignment of numerous common carrier licenses including cellular, PCS, WCS and microwave authorizations. *Vodafone/Bell Atlantic Order*, 15 FCC Rcd at 16,514, 16,521 (¶¶ 19, 38).

¹²³ On April 8, 2008, Verizon Wireless provided a detailed showing to the Commission confirming that its current foreign ownership remains consistent with the foreign ownership ruling issued by the Commission in the *Vodafone/Bell Atlantic Order*. *See* Letter from Nancy J. Victory, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 07-208, DA 07-4192 (April 8, 2008).

Commission has since extended this authority to permit Verizon Wireless to acquire numerous additional common carrier licenses and authorizations.¹²⁴ This request seeks a declaratory ruling allowing Vodafone to hold the same indirect ownership interest of up to 65.1 percent in the authorizations to be acquired and any future licenses and authorizations to be acquired by the ALLTEL Subsidiaries and Partnerships.

The public interest will be served if the Commission extends Verizon Wireless' current Section 310(b)(4) authority to hold interests in common carrier licenses and authorizations to encompass the ALLTEL Subsidiaries and Partnerships and the FCC licenses they will hold following transfer to Verizon Wireless as a result of this transaction. In the *Foreign Participation Order*, the Commission concluded that allowing additional foreign investment in common carrier wireless licensees beyond the 25 percent benchmark of Section 310(b)(4) will promote competition in the U.S. market, thereby serving the public interest.¹²⁵ The Commission, therefore, adopted a presumption in favor of allowing such investment if the investment is from entities organized under the laws of WTO Members.¹²⁶ As the Commission previously concluded, Vodafone's principal place of business is the United Kingdom, a WTO Member.¹²⁷

¹²⁴ See, e.g., *International Authorizations Granted*, Public Notice, 21 FCC Rcd 13,575 (2006) (granting Verizon Wireless' request to extend the existing foreign ownership ruling to AWS and other Wireless Communications Services licenses Verizon Wireless may acquire in the future); *Northcoast Order*, 18 FCC Rcd at 6492 (¶ 6 & n.15) (finding that Verizon Wireless' interest "ha[d] been previously approved by the Commission under Section 310(b)(4)" and because "no changes have occurred in Verizon Wireless' foreign ownership since . . . these rulings . . . the applications raise no new foreign ownership issues").

¹²⁵ *Rules and Policies on Foreign Participation in the U.S. Telecomms. Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23,891, 23,940 (¶ 111) (1997).

¹²⁶ *Id.* at 23,913 (¶ 50) and 23,940 (¶¶ 111-12).

¹²⁷ *Vodafone/Bell Atlantic Order*, 15 FCC Rcd at 16,514 (¶ 18).

The Commission already has determined that the public interest would be served by allowing Vodafone to hold up to a 65.1 percent interest in the common carrier licenses held by Verizon Wireless.¹²⁸ The same public interest rationale that applied in that decision should apply with equal force to the ALLTEL Subsidiaries and Partnerships and the FCC licenses being acquired by Verizon Wireless as a result of the proposed transaction.¹²⁹ The Commission should therefore issue a declaratory ruling extending Verizon Wireless' Section 310(b)(4) authority to these licenses, to the extent such extension of authority is needed.

B. Additional Authorizations

As set forth in the Applications, ALLTEL controls or has a minority, non-controlling general partner interest in entities holding numerous Commission licenses. The lists of call signs referenced in the Applications are intended to be complete and to include all licenses held by the respective licensees that are subject to the transaction. One or more of the ALLTEL Subsidiaries and Partnerships, however, may have on file or may hereafter file additional requests for authorizations for new or modified facilities, which may be granted or remain pending during the pendency of the Applications. Accordingly, the Applicants request that the FCC authorize Verizon Wireless to acquire control of the following upon the grant of the transfer of control applications:

- Any authorization issued to or leases obtained by one or more of the ALLTEL Subsidiaries and Partnerships during the Commission's consideration of the Applications and the period required for consummation of the transaction following approval;

¹²⁸ *Id.*, 15 FCC Rcd at 16,514 (¶ 19).

¹²⁹ Further, the network security commitments previously made by Verizon Wireless and Vodafone in connection with an agreement with the United States Department of Defense, Department of Justice, and the Federal Bureau of Investigation, dated Dec. 14, 1999, will apply to the authorizations acquired as a result of this transaction. *See infra* Section III(G).

- Construction permits held by such licensees that mature into licenses after closing; and
- Applications that are filed after the date of the Applications and that are pending at the time of consummation.

Such actions would be consistent with Commission precedent.¹³⁰ Moreover, the Applicants request that Commission approval of the transfer applications include any licenses that may have been inadvertently omitted.

C. Exemption from Cut-Off Rules

Pursuant to Sections 1.927(h), 1.929(a)(2) and 1.933(b) of the Commission's Rules,¹³¹ to the extent necessary,¹³² the Applicants request a blanket exemption from any applicable cut-off rules in cases where one or more of the ALLTEL Subsidiaries and Partnerships file amendments to pending applications to reflect consummation of the proposed transfer of control. This exemption is requested so that amendments to pending applications to report the change in ultimate ownership of such licensees, which are parties to these Applications, would not be

¹³⁰ See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21,626 (¶ 275); *Application of WorldCom, Inc., and MCI Commc'ns Corp. for Transfer of Control of MCI Commc'ns Corp. to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18,025 (¶ 226) (1998); *Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19,985, 20,097 (¶ 247) (1997) ("NYNEX-Bell Atlantic Order"); *Applications of Craig O. McCaw and AT&T for Consent to Transfer of Control of McCaw Cellular Commc'ns, Inc. and Its Subsidiaries*, Memorandum Opinion & Order, 9 FCC Rcd 5836, 5909 (¶ 137 & n.300) (1994) ("McCaw-AT&T Order").

¹³¹ 47 C.F.R. §§ 1.927(h), 1.929(a)(2), and 1.933(b).

¹³² With respect to cut-off rules under Sections 1.927(h) and 1.929(a)(2), the Commission has previously found that the public notice announcing the transaction will provide adequate notice to the public with respect to the licenses involved, including for any license modifications pending. In such cases, it determined that a blanket exemption of the cut-off rules was unnecessary. See *Applications of Ameritech Corp. and GTE Consumer Servs. Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 6667, 6668 (¶ 2 & n.6) (1999); *In re Applications of Comcast Cellular Holdings, Co. and SBC Commc'ns, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 10,604, 10,605 (¶ 2 & n.3) (1999).

treated as major amendments. The scope of the transaction between Verizon Wireless and Atlantis Holdings demonstrates that the ownership change would not be made for the acquisition of any particular pending application, but as part of a larger transaction undertaken for an independent and legitimate business purpose. Grant of such application would be consistent with previous Commission decisions routinely granting a blanket exemption in cases involving similar transactions.¹³³

D. Unconstructed Facilities

The vast majority of the FCC authorizations covered by the transfer of control applications involve constructed facilities. The only exceptions are 47 recently-obtained point-to-point microwave radio licenses, 59 Local Multipoint Distribution Service licenses, and one cellular license (all of which are authorized, but not yet required to be constructed), as well as seven 39 GHz licenses, which are the subject of a timely-filed, pending request for extension of time to construct.¹³⁴ The transfer of control of these unbuilt facilities is incidental to this

¹³³ See, e.g. *NYNEX-Bell Atlantic Order*, 12 FCC Rcd at 20,091-0922 (¶ 234); *Applications of PacifiCorp Holdings, Inc., Transferor, and Century Tel. Enters., Inc., Transferee, For Consent to Transfer Control of Pacific Telecom, Inc., a Subsidiary of PacifiCorp Holdings, Inc.*, *Memorandum Opinion and Order*, 13 FCC Rcd 8,891, 8915-16 (¶ 47) (1997); *McCaw-AT&T Order*, 9 FCC Rcd at 5909 (¶ 137 & n.300).

¹³⁴ The station call signs for the unbuilt facilities are: WPLM505, WPLM506, WPLM507, WPLM508, WPLM509, WPLM510, WPLM511, WPLM512, WPLM513, WPLM514, WPLM515, WPLM516, WPLM517, WPLM518, WPLM519, WPLM520, WPLM521, WPLM522, WPLM523, WPLM524, WPLM525, WPLM391, WPLM392, WPLM393, WPLM339, WPLM340, WPLM341, WPLM342, WPLM343, WPLM344, WPLM345, WPLM346, WPLM347, WPLM348, WPLM349, WPLM350, WPLM351, WPLM352, WPLM353, WPLM354, WPLM356, WPLM357, WPLM358, WPLM359, WPLM360, WPLM361, WPLM371, WPLM372, WPLM373, WPLM376, WPLM377, WPLM378, WPLM379, WPLM380, WPLM381, WPLM382, WPLM383, WPLM384, WPLM385, WPQR581, WPQR580, WPQR583, WPQR585, WPQR586, WPQR584, WPQR582, WQGM465, WQHC996, WQHU201, WQHU202, WQHK351, WQHV851, WQHV852, WQIT938, WQHK375, WQHT230, WQHT999, WQIC793, WQIU812, WQGZ566, WQHK349, WQHK350, WQHP971, WQHS338, WQHS339, WQHZ270, WQHS718, WQHM647, WQIC999, WQID200, WQID242, WQID243, WQGX890, WQIF799, WQII537, WQII538, WQII539, WQII544, WQII545, WQII546, WQII547, WQII548, WQII549, WQII550, WQII551,

transaction, with no separate payment being made for any individual authorization or facility. Accordingly, there is no reason to review the transaction from the perspective of trading in licenses.¹³⁵

E. Unjust Enrichment

None of the authorizations held by ALLTEL were obtained pursuant to set-asides or bidding credits for designated entities. Thus, the unjust enrichment provisions of the Commission's auction rules¹³⁶ do not apply.

Several of ALLTEL's authorizations were originally subject to the Commission's installment payment plan.¹³⁷ For all of these authorizations, however, the installment payment obligations have been paid in full.

F. Environmental Impact

As required by Section 1.923(e) of the Commission's rules,¹³⁸ the Applicants state that the transfers of control of licenses and spectrum leases involved in this transaction will not have a significant environmental effect, as defined by Section 1.1307 of the Commission's rules.¹³⁹ A

WQII552, WQII553, WQIL591, WQIL592, WQIM450, WQIS267, WQIS268, WQIS803, and WQIS804.

¹³⁵ See 47 C.F.R. § 1.948(i)(1) (authorizing the Commission to request additional information if the transaction appears to involve unconstructed authorizations obtained for the "principal purpose of speculation"); *id.* § 101.55(c)-(d) (permitting transfers of unconstructed microwave facilities provided that they are "incidental to the sale [of] other facilities or merger of interests."); *id.*

¹³⁶ 47 C.F.R. § 1.2111(b)-(d).

¹³⁷ See ULS Application File Nos. 0003464799, 0003464786, 0003464784, and 0003464996.

¹³⁸ 47 C.F.R. § 1.923(e).

¹³⁹ *Id.* § 1.1307.

transfer of control of licenses or spectrum lease does not involve any engineering changes and, therefore, cannot have a significant environmental impact.

G. DOJ Agreement

Verizon Wireless, Bell Atlantic Corporation (Verizon Communications' predecessor-in-interest) and Vodafone are parties to an agreement with the United States Department of Defense, Department of Justice ("DOJ"), and the Federal Bureau of Investigation, dated December 14, 1999. The agreement provides that any system Verizon Wireless later acquires pursuant to an Application for Assignment or Transfer of Control of International 214 Authority is subject to the agreement. Verizon Wireless' understanding of this requirement was recently confirmed in a letter from the Steve Zipperstein, General Counsel of Verizon Wireless, to representatives of the above departments and agencies.¹⁴⁰ Verizon Wireless here again confirms that, following consummation, the licensed systems that are the subject of this transaction will be subject to the DOJ Agreement.

H. Related Governmental Filings

The DOJ will complete its own review of this transaction pursuant to the Hart-Scott-Rodino Antitrust Improvement Act of 1976¹⁴¹ and associated regulations. The Applicants plan to submit a pre-merger notification form and an associated documentary appendix to DOJ and the Federal Trade Commission.

¹⁴⁰ Letter from Steven E. Zipperstein, General Counsel, Verizon Wireless, to the Honorable Laura H. Parsky, Deputy Assistant Attorney General, U.S. Dept. of Justice, Douglas P. Larsen, Esq., Deputy General Counsel for Acquisition and Logistics, U.S. Dept. of Defense, and Gary M. Bald, Executive Assistant Director for Counterterrorism/Counterintelligence, Federal Bureau of Investigation (June 23, 2006).

¹⁴¹ 15 U.S.C. § 18a.

I. ALLTEL Minority Partnership Interests

ALLTEL holds a minority, non-controlling general partnership interest in one partnership and two limited partnerships ("Partnerships"), each of which holds various wireless authorizations. The Partnerships include: (1) Illinois Valley Cellular RSA 2-II Partnership; (2) Northwest Missouri Cellular Limited Partnership; and (3) Pittsfield Cellular Telephone Company. Under the relevant partnership agreements, ALLTEL is precluded from exercising control over each of the Partnerships, and each Partnership is controlled and managed by another carrier. The Applicants are filing FCC Forms 603 for the licenses held by each of these entities on a *pro forma*, non-forbearance basis to seek Commission approval to transfer control of these minority, non-controlling interests. The *pro forma* treatment of the transfer of control of licenses in which ALLTEL holds a minority general partner interest is consistent with prior transactions approved by the Commission.¹⁴²

J. ALLTEL Spectrum Leases

ALLTEL holds a controlling or minority general partner interest in several spectrum leases. The Applicants have applied for authority to transfer control of those leases.

Specifically:

- ALLTEL Communications, LLC leases 5 MHz of spectrum from New Cingular Wireless PCS, LLC ("New Cingular") in two counties (Albany and Laramie) in the Cheyenne, WY BTA (BTA077).¹⁴³ In particular, ALLTEL Communications, LLC leases 1900-1902.50/1980-1982.50 MHz from New Cingular's C Block license WPTI725.
- ALLTEL Communications, LLC leases 5 MHz of spectrum from New Cingular Wireless PCS, LLC ("New Cingular") in the Paris, TX BTA (BTA341).¹⁴⁴ In

¹⁴² See, e.g., *AT&T Wireless Services, Inc. and Cingular Wireless Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations*, Public Notice, 19 FCC Rcd 6185 (Apr. 2, 2004).

¹⁴³ See ULS Lease No. L000003393.

¹⁴⁴ See ULS Lease No. L000003394.